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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

15-0005

In re:) AWA Docket No. ~~14-0132~~ ysc
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)
PHYLLIS J. BRITZ, an individual doing)
business as WINDY RIDGE KENNELS,)
~~and BRUCE BRITZ, an individual,~~ ysc)
Respondent.) DECISION AND ORDER AS TO
PHYLLIS J. BRITZ BY
REASON OF DEFAULT

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 ^{October 9, ysc} ~~et seq.~~)(AWA or Act), by a complaint filed on ~~June 18,~~ 2014, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), alleging that the respondents violated the regulations promulgated under the Act, 9 C.F.R. §§ 1.1, *et seq.*(Regulations).

The Office of the Hearing Clerk effected service of the complaint and a copy of the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), on respondent Phyllis J. Britz on October 16, 2014, by certified mail (Receipt No. 70123460000338334405).

Pursuant to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), respondent Phyllis J. Britz was required to file an answer within 20 days after service of the complaint. The 20th day after service of the complaint on respondent Phyllis J. Britz was November 5, 2014. Respondent Phyllis J. Britz failed to file an answer by that date, as prescribed in section 1.136 of the Rules of Practice, or at all. Consequently, the material facts alleged in the complaint are all admitted by the respondent Phyllis J. Britz's failure to file an answer, and are adopted and set forth herein as Findings of Fact and Conclusions of Law. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

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FINDINGS OF FACT

1. Respondent Phyllis J. Britz is an individual whose mailing address is 3252 NW Fairmont Road, Maysville, Missouri 64469-9259. At all times mentioned herein, said respondent operated as a dealer as that term is defined in the Act and the Regulations, and did business as Windy Ridge Kennels. Respondent Phyllis Britz held AWA license 43-A-4935 (breeder) until August 9, 2010, when that license expired for failure to renew.

2. Respondent Phyllis Britz reported to APHIS receipt of \$16,275 from the sale of 93 animals during her business year commencing June 1, 2008, and ending June 1, 2009. The instant complaint alleges violations of grave seriousness. On January 7, 2010, APHIS issued an Official Warning (APHIS Form 7060), to respondent Phyllis Britz for failing to comply with the Regulations and to meet the minimum standards for dogs promulgated under the Act (9 C.F.R. §§ 3.1-3.19)(Standards).

3. On or about the following dates, respondent Phyllis J. Britz failed to establish, maintain, and follow programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries and regular observation and assessment of dogs, and/or by failing to have an attending veterinarian provide adequate veterinary medical care to dogs in her custody, as follows:

a. March 31, 2010. A female beagle (#38) was observed to be squinting and her left eye had visible discharge, and the dog had not been seen by a veterinarian.

b. July 22, 2010. A female brindle and white boxer, without identification, was observed to be thin, with prominent hip bones and vertebrae, very prominent ribs, and a tucked abdomen, and had not been seen by a veterinarian.

c. July 22, 2010. A female fawn and white boxer, without identification, was

observed to be thin, with prominent hip bones and vertebrae, very prominent ribs, and a tucked abdomen, and had not been seen by a veterinarian.

d. July 22, 2010. A female Shih Tzu (#131) was observed to have generalized hair loss and red bumps over large areas of her body, and had not been seen by a veterinarian.

e. July 22, 2010. A female beagle (#150) was observed to have a reddened and inflamed mass in the corner of her left eye, and had not been seen by a veterinarian.

f. July 22, 2010. A female American Bulldog, without identification, was observed to have excessive tearing from and staining around both eyes, and what appeared to be an untreated injury on the side of her muzzle, and had not been seen by a veterinarian.

g. July 22, 2010. Three dogs (a Basset Hound without identification, and two smaller dogs) were observed to have excessively long toenails that had not been trimmed, and which can cause discomfort and injury to the dogs, and these dogs had not been seen by a veterinarian (or a groomer).

h. July 22, 2010. Two dogs were observed with multiple embedded ticks.

4. On or about March 31, 2010, and July 22, 2010, respondent Phyllis J. Britz failed to establish programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries, and specifically, respondent Phyllis J. Britz maintained unlabeled and/or expired medications for use in dogs (March 31, 2010: Ivermectin), and maintained medications (March 31, 2010: Fish Pen, Zeasorb AF, Parents Choice; and on July 22, 2010: Fish Mox and Fish Cycline) that were not manufactured for use in dogs, and the use of which had not been recommended by respondent Phyllis J. Britz's veterinarian.

5. On July 22, 2010, respondent Phyllis J. Britz failed to identify twenty-five dogs as

required.

6. On or about March 31, 2010, respondent Phyllis J. Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, respondent Phyllis J. Britz housed approximately fifteen Chihuahua dogs in their residence, but not contained in any enclosure in a manner that would protect them from injury. Respondent Phyllis J. Britz also housed a nursing Chihuahua in an unsecured enclosure, from which the nursing female escaped, whereupon she had access to, and attacked, one of the free-roaming dogs.

7. On July 22, 2010, respondent Phyllis J. Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, respondent Phyllis J. Britz did not house eight dogs in any enclosure but were free-roaming on the premises, and were not contained securely in a manner that would protect them from injury.

8. On July 22, 2010, respondent Phyllis J. Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, respondent Phyllis J. Britz did not house a Basset Hound and her four puppies in a primary enclosure that would contain them securely and protect them from injury.

9. On or about the following dates, respondent Phyllis J. Britz failed to comply with the Standards, as set forth below.

a. March 31, 2010. The enclosure housing a female Chihuahua was not structurally sound and maintained in a manner that contained the dog, and the dog was able to and did escape its enclosure.

b. July 22, 2010. Respondent Phyllis J. Britz housed a Miniature Doberman

Pinscher and her puppies in a primary enclosure containing a standard household heating pad, the cord of which was accessible to the animals, and could cause them injury.

c. July 22, 2010. Respondent Phyllis J. Britz housed dogs in an outdoor enclosure with a metal shade structure that was in disrepair and could injure the dogs.

d. July 22, 2010. Respondent Phyllis J. Britz housed dogs in three outdoor enclosures with fences that were in disrepair, and had lost their structural integrity.

e. July 22, 2010. The sheltered facilities housing dogs contained an accumulation of clutter, tools, and miscellaneous material.

f. July 22, 2010. The metal support pipes of outdoor enclosures housing dogs were rusted and unable to be cleaned and sanitized as required.

g. July 22, 2010. Four self feeders in sheltered facilities housing dogs were rusted and unable to be cleaned and sanitized as required.

h. July 22, 2010. Wire side panels in three enclosures housing dogs were rusted and unable to be cleaned and sanitized as required.

i. March 31, 2010. The metal support pipes of several outdoor enclosures were rusted and unable to be cleaned and sanitized as required.

j. March 31, 2010. An enclosure housing a female beagle (with an eye injury) contained several broken wires with sharp points that extended into the enclosure and were accessible to the dog.

k. July 22, 2010. Enclosures housing dogs contained several broken, cut, or bent wires with sharp points that extended into the enclosures and were accessible to the dog.

l. March 31, 2010. Respondent Phyllis J. Britz housed dogs in enclosures with surfaces that had been chewed and had splintered surfaces that could not be cleaned and

sanitized as required.

m. March 31, 2010. Respondent Phyllis J. Britz failed to clean and sanitize outdoor shelters for dogs, and the bedding in the shelters had become compacted with dirt and rock chat.

n. July 22, 2010. Respondent Phyllis J. Britz failed to clean and sanitize outdoor shelters for dogs, and there was grime on the access doors of the shelters and the interior and exterior surfaces of the shelters were not cleaned as required.

o. July 22, 2010. Respondent Phyllis J. Britz failed to store supplies of food for dogs in a manner that protected them from spoilage, contamination, and vermin infestation as required, and respondent Phyllis J. Britz maintained an uncovered barrel containing food for dogs.

p. July 22, 2010. An outdoor enclosure housing two Coonhounds and one Golden Retriever had holes containing standing water.

q. July 22, 2010. Respondent Phyllis J. Britz's drainage system for sheltered facilities housing dogs was non-functioning, and waste material washed directly onto the ground and flowed downhill through the enclosure.

r. July 22, 2010. Respondent Phyllis J. Britz' outside wash-downs for sheltered facilities were constructed and maintained in a manner that permitted animal waste from upper enclosures to fall directly onto dogs housed in lower enclosures.

s. July 22, 2010. Enclosures housing three dogs had wooden floors that were not impervious to moisture.

t. March 31, 2010. There was inadequate shelter from the elements for ten dogs housed outdoors.

- u. March 31, 2010. There was inadequate shade provided to ten dogs housed outdoors.
- v. July 22, 2010. There was inadequate shelter from the elements for eleven dogs housed outdoors.
- w. July 22, 2010. There was inadequate shade provided to eleven dogs housed outdoors.
- x. March 31, 2010. Respondent Phyllis J. Britz housed dogs in enclosures with floors that sagged and bounced under the weight of the dogs, and did not support the dogs as required.
- y. July 22, 2010. Respondent Phyllis J. Britz housed dogs in three enclosures with floors constructed of uncoated, bare wire under 1/8" in diameter, which wire could injure the dogs' feet.
- z. July 22, 2010. Feeding receptacles for dogs housed in four enclosures were not located so as to minimize contamination, were not protected from rain and snow, and were not cleaned and sanitized as required.
- aa. July 22, 2010. Respondent Phyllis J. Britz failed to remove a female Shih-Tzu and her four puppies from their enclosure before cleaning the enclosure with water by hosing, flushing or other methods, and the enclosure was not large enough to permit the dogs to avoid being wetted.
- bb. March 31, 2010. Respondent Phyllis J. Britz stored frayed and discarded carpet remnants on top of an enclosure housing dogs, and one of the dogs had become entangled in the strands of the carpet remnants.
- cc. July 22, 2010. Respondent Phyllis J. Britz failed to keep the premises clean

and free of accumulations of trash and discarded material.

CONCLUSIONS OF LAW

1. On or about the following dates, respondent Phyllis J. Britz willfully violated the Regulations by failing to establish, maintain, and follow programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries and regular observation and assessment of dogs, and/or by failing to have an attending veterinarian provide adequate veterinary medical care to dogs in their custody, 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3), as follows:

- a. March 31, 2010. A female beagle (#38).
- b. July 22, 2010. A female brindle and white boxer, without identification.
- c. July 22, 2010. A female fawn and white boxer, without identification.
- d. July 22, 2010. A female Shih Tzu (#131).
- e. July 22, 2010. A female beagle (#150).
- f. July 22, 2010. A female American Bulldog, without identification.
- g. July 22, 2010. Three dogs (a Basset Hound without identification, and two smaller dogs).
- h. July 22, 2010. Two dogs.

2. On or about March 31, 2010, and July 22, 2010, respondent Phyllis J. Britz willfully violated the Regulations by failing to establish programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries. 9 C.F.R. § 2.40(b)(2).

3. On July 22, 2010, respondent Phyllis J. Britz willfully violated the Regulations, 9 C.F.R. § 2.50(a), by failing to identify twenty-five dogs, as required.

4. On or about March 31, 2010, respondent Phyllis J. Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

5. On July 22, 2010, respondent Phyllis J. Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

6. On July 22, 2010, respondent Phyllis J. Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

7. On or about the following dates, respondent Phyllis J. Britz willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to comply with the Standards, as set forth below.

a. March 31, 2010. The enclosure housing a female Chihuahua was not structurally sound and maintained in a manner that contained the dog, and the dog was able to and did escape its enclosure. 9 C.F.R. § 3.1(a).

b. July 22, 2010. Respondent Phyllis J. Britz housed a Miniature Doberman Pinscher and her puppies in a primary enclosure containing a standard household heating pad, the cord of which was accessible to the animals, and could cause them injury. 9 C.F.R. § 3.1(a).

c. July 22, 2010. Respondent Phyllis J. Britz housed dogs in an outdoor enclosure with a metal shade structure that was in disrepair and could injure the dogs. 9 C.F.R. § 3.1(a).

d. July 22, 2010. Respondent Phyllis J. Britz housed dogs in three outdoor enclosures with fences that were in disrepair, and had lost their structural integrity. 9 C.F.R.

§ 3.1(a).

e. July 22, 2010. The sheltered facilities housing dogs contained an accumulation of clutter, tools, and miscellaneous material. 9 C.F.R. § 3.1(b).

f. July 22, 2010. The metal support pipes of outdoor enclosures housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

g. July 22, 2010. Four self feeders in sheltered facilities housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

h. July 22, 2010. Wire side panels in three enclosures housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

i. March 31, 2010. The metal support pipes of several outdoor enclosures were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

j. March 31, 2010. An enclosure housing a female beagle (with an eye injury) contained several broken wires with sharp points that extended into the enclosure and were accessible to the dog. 9 C.F.R. § 3.1(c)(1)(ii).

k. July 22, 2010. Enclosures housing dogs contained several broken, cut, or bent wires with sharp points that extended into the enclosures and were accessible to the dog. 9 C.F.R. § 3.1(c)(1)(ii).

l. March 31, 2010. Respondent Phyllis J. Britz housed dogs in enclosures with surfaces that had been chewed and had splintered surfaces that could not be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(2).

m. March 31, 2010. Respondent Phyllis J. Britz failed to clean and sanitize outdoor shelters for dogs, and the bedding in the shelters had become compacted with dirt and rock chat. 9 C.F.R. § 3.1(c)(3).

- n. July 22, 2010. Respondent Phyllis J. Britz failed to clean and sanitize outdoor shelters for dogs, and there was grime on the access doors of the shelters and the interior and exterior surfaces of the shelters were not cleaned as required. 9 C.F.R. § 3.1(c)(3).
- o. July 22, 2010. Respondent Phyllis J. Britz failed to store supplies of food for dogs in a manner that protected them from spoilage, contamination, and vermin infestation as required, and respondent Phyllis J. Britz maintained an uncovered barrel containing food for dogs. 9 C.F.R. § 3.1(e).
- p. July 22, 2010. An outdoor enclosure housing two Coonhounds and one Golden Retriever had holes containing standing water. 9 C.F.R. § 3.1(f).
- q. July 22, 2010. Respondent Phyllis J. Britz' drainage system for sheltered facilities housing dogs was non-functioning, and waste material washed directly onto the ground and flowed downhill through the enclosure. 9 C.F.R. § 3.1(f).
- r. July 22, 2010. Respondent Phyllis J. Britz' outside wash-downs for sheltered facilities were constructed and maintained in a manner that permitted animal waste from upper enclosures to fall directly onto dogs housed in lower enclosures. 9 C.F.R. § 3.1(f).
- s. July 22, 2010. Enclosures housing three dogs had wooden floors that were not impervious to moisture. 9 C.F.R. § 3.2(d).
- t. March 31, 2010. There was inadequate shelter from the elements for ten dogs housed outdoors. 9 C.F.R. § 3.4(b)(1), (2).
- u. March 31, 2010. There was inadequate shade provided to ten dogs housed outdoors. 9 C.F.R. § 3.4(b).
- v. July 22, 2010. There was inadequate shelter from the elements for eleven dogs housed outdoors. 9 C.F.R. § 3.4(b)(1), (2).

- w. July 22, 2010. There was inadequate shade provided to eleven dogs housed outdoors. 9 C.F.R. § 3.4(b).
- x. March 31, 2010. Respondent Phyllis J. Britz housed dogs in enclosures with floors that sagged and bounced under the weight of the dogs, and did not support the dogs as required. 9 C.F.R. § 3.6(a)(2)(xii).
- y. July 22, 2010. Respondent Phyllis J. Britz housed dogs in three enclosures with floors constructed of uncoated, bare wire under 1/8" in diameter, which wire could injure the dogs' feet. 9 C.F.R. § 3.6(a)(2)(xii).
- z. July 22, 2010. Feeding receptacles for dogs housed in four enclosures were not located so as to minimize contamination, were not protected from rain and snow, and were not cleaned and sanitized as required. 9 C.F.R. § 3.9(b).
- aa. July 22, 2010. Respondent Phyllis J. Britz failed to remove a female Shih-Tzu and her four puppies from their enclosure before cleaning the enclosure with water by hosing, flushing or other methods, and the enclosure was not large enough to permit the dogs to avoid being wetted. 9 C.F.R. § 3.11(a).
- bb. March 31, 2010. Respondent Phyllis J. Britz stored frayed and discarded carpet remnants on top of an enclosure housing dogs, and one of the dogs had become entangled in the strands of the carpet remnants. 9 C.F.R. § 3.11(c).
- cc. July 22, 2010. Respondent Phyllis J. Britz failed to keep the premises clean and free of accumulations of trash and discarded material. 9 C.F.R. § 3.11(c).

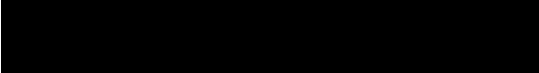
ORDER

1. Respondent Phyllis J. Britz, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.
2. Animal Welfare Act license 43-A-4935 is hereby revoked.
3. Respondent Phyllis J. Britz is assessed a civil penalty of \$9,600, which shall be payable to the Treasurer of the United States, *and reference AWA 15-0005.*

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.

this 10 day of Dec, ~~2014~~ 2015 *JSC*


Jill S. Clifton
Administrative Law Judge